



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 13th March, 2023

Pronounced on: 04th July, 2023

+ CS (OS) 2326/1996

BALDEV SINGH

R/o D-74, Vivek Vihar,
Delhi.

..... Plaintiff

Through: Mr. Deepanshu and Ms. Ankita
Chopra, Advocates.

Versus

SKIPPER TOWERS PVT. LTD.

R/o 22, Barakhamba Road,
New Delhi

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

I.A. 17763/2022

1. Shri. Hardev Singh, brother of Shri. Baldev Singh and son of Mrs. Avtar Kaur (*plaintiffs in above mentioned Suit which was decided vide judgement dated 01.09.1997 and decreed on 05.09.1997*) has filed an application under Section 151 of Code of Civil Procedure, 1908 (*hereinafter referred to as the 'Act'*) for inclusion of the name of Mrs. Avtar Kaur through her legal heir, the applicant Shri. Hardev Singh in the Wait List for allotment of Flat in Skipper Towers, 22, Barakhamba Road, New Delhi.

2. It is stated in the application that Shri. Baldev Singh and his mother, Mrs. Avtar Kaur filed the aforementioned Civil Suit bearing



CS(OS) No. 2326/1996 for Specific Performance of Agreement to allot Flat No. 13 and 13A/Office Space respectively on the first floor admeasuring 120 square ft. each in the building proposed to be constructed on Skipper Tower, 22, Barakhamba Road, New Delhi, (*hereinafter referred to as property in question*). Shri. Baldev Singh had paid Rs. 1,00,000/- while Mrs. Avtar Kaur paid Rs. 1,20,000/- towards the entire consideration amount respectively which was duly corroborated by Reference No. 55 dated 14.02.1991 issuing allotment of office space in favour of Mrs. Avtar Kaur, mother of the applicant, Shri. Hardev Singh.

3. Disputes arose amongst the allottees and the Builder and one William Jacks filed a *Civil Suit No. 728/1987 titled as William Jacks & Company (India) Ltd. vs Skipper Sales Pvt Ltd.* against the respondent/ Builder herein, claiming that it had not acted in accordance with the business ethics. A number of suits got instituted by various allottees including by Shri. Baldev Singh and Mrs. Avtar Kaur before this Court.

4. This Court in Suit No. 324 of 1990 titled as *Shree Vijender Singh vs Skipper towers Pvt. Ltd* appointed a Committee comprising of two retired learned Judges to see how the purchasers could be accommodated.

5. The Committee observed that there were more allottees/buyers than the flats available in the complex. They also noted that more space had become available on account of change in Bye-laws which allowed them to construct new blocks. A Waiting list was directed to be prepared in respect of the flats buyers who had booked the space after the cut off dated i.e. 31.12.1986. A Waiting List was consequently, prepared wherein the allotment was to be done on the same principle of “*First come First*



serve” with reference to the amounts paid for booking of the flats. The names of Shri. Baldev Singh and Mrs. Avtar Kaur were on the list of allottees who were entitled to refund, but the name of Sh. Baldev Singh alone featured at serial No. 7 in the Waiting List.

6. All the suits of prospective buyers (including the civil suit filed by Mr. Baldev Singh) were then taken up together as batch matters and were decided vide common Judgement dated 01.09.1997 titled as William Jacks & Company (India) Ltd. vs Skipper Sales Pvt Ltd. 1997 SCC OnLine Del 711 wherein applying the recommendations of Committee Report, the suit of the plaintiff bearing no.CS(OS) 2326/1996 was decided by observing that the plaintiff Shri. Baldev Singh having entered into the Agreement dated 08.10.1990 for allotment of Flat No. 13 being beyond the cut-off date, he was not entitled to be considered for allotment of the Flat but was entitled to refund of the consideration amount of Rs. 1,20,000/- that was paid out of the common pool. Thus, the claims made by most of the plaintiffs for Specific Performance for allotment of space were rejected, but many of them including Sh. Baldev Singh, were treated as wait listed cases.

7. It is submitted in this application that though present suit was filed both by Shri. Baldev Singh and Mrs. Avtar Kaur, but only the name of Shri. Baldev Singh got mentioned and the name of Mrs. Avtar Kaur got missed out in the Waiting List. Mrs. Avtar Kaur during her lifetime had bequeathed by virtue of a Will dated 02.03.1993, her rights in the allotted space in property in question to the applicant, Shri. Hardev Singh.

8. Shri. Baldev Singh, the plaintiff in original suit, on becoming aware that there is still surplus space available in the subject property, wrote a



Letter dated 01.04.2022 to Skipper Towers stating that two Units were booked, one in his name and other in the name of his mother and he is ready and willing to pay the additional amount for allotment. Likewise, the applicant, Shri. Hardev Singh having inherited the right of Mrs. Avtar Kaur by virtue of Will dated 02.03.1993, wrote to the Chairman, MMG Committee, Barakhamba Road for allotment of the allotted space to Mrs. Avtar Kaur in his favour and also expressed his readiness and willingness to pay the additional amount which may be found due. However, the Committee has refused to accept the claim of the applicant as legal heir of his mother.

9. Thereafter, the applicant issued a legal Notice but the respondent refused to accede to the request on the ground that in the Waiting List only the name of Shri. Baldev Singh alone and there is no mention of the name of Mrs. Avtar Kaur against their suit number. The applicant's claim cannot be considered unless he got the name of Mrs. Avtar Kaur included by the Order of the Court. The applicant being left with no remedy, has approached this Court.

10. **Submissions heard.**

11. The factual background giving rise to the present application is that various persons had been allotted flats (office units) in Skipper Tower, 22, Barakhamba Road, New Delhi. Disputes arose which led to filing of several civil suits in this Court, by different allottees for Specific Performance for allotment of Office space against the M/s Skippers Towers.

12. The disgruntled allottees/buyers filed their respective Civil suits for Specific Performance for allotment of the respective Flats. In the interim,



because of the changed By-Laws and because some of the flat buyers did not respond, more space became available. In the case of Shree Vijender Singh (supra) a Committee comprising of two retired learned Judges was appointed to recommend how the purchasers could be accommodated, was appointed.

13. The Committee in its Report observed that there were more allottees/buyers than the flats available in the complex. It was also noted that more space had become available on account of change in Bye-laws which allowed them to construct new blocks. A Waiting list was directed to be prepared in respect of the flats buyers who had booked the space after the cut off dated i.e. 31.12.1986. The Waiting List was accordingly prepared and the name of plaintiff Baldev Singh featured at Serial No.7 as is apparent from the excerpt of recommendations attached in the judgement of Skipper Bhawan Flat Buyers Association vs Skipper Tower Pvt Ltd in RFA No 23/1998 dated 23.11.2001 as under:

“368. ...**WAITLISTED**

S. No. Party name S. No. Appeal/CM No. 1. Bharat Securities (P) Ltd. 2890/96 34/98 2. M/s. Nagarjuna Finance Ltd. 3686/92 6/99 3. ----Do----3697/92 7/99 4. S. Surjeet Singh 126/91 28/99 5. M/s Donhill Tobacco Co. (P) Ltd. 2486/92 6. M/s. Laxmi Distributors Ltd. 2490/92- 7. Mr. Baldev Singh 2326/96 142/97 8. Mrs. Prem Gulati 2181/96- 9.....”

14. It was further recommended that the allotment was to be done on the same principle of “First come First serve” with reference to the amounts paid for booking of the flats, as per the Waiting List. It can be observed that though the plaintiffs in the present Suit were found eligible



for refund, but at Serial no. 7 of the Waiting List only the name of Shri. Baldev Singh got mentioned.

15. Relying on the Committee Report, all the suit of different allottees were decided by the common judgement in William Jacks & Company (India) Ltd vs Skipper Sales Pvt Ltd (supra). In civil suit No. 2326 /1996, that was filed by the plaintiffs, it was observed that since the plaintiff, Shri. Baldev Singh and his mother, Mrs. Avtar Kaur had been allotted the premises after 1986, they were not entitled to specific performance and were thus awarded a refund of Rs. 1,20,000/-. The observations made were as under:

“151. Mr. Baldev Singh and his mother Mrs. Avtar had filed Suit No. 2326/96 against Skipper Towers Pvt. Ltd. for the relief of specific performance. It is stated in the plaint that first plaintiff Mr. Baldev Singh entered into an agreement dated 8.10.1990 for allotment of Flat No. 113 on the Mezzanine/1st Floor for an area of 100 sq. ft..

152. The agreement is on 8.10.1990 and, therefore, the claim of the plaintiffs cannot at all be considered. It is stated that the plaintiff had paid a sum of Rs. 1,20,000.00 . That is not disputed. The plaintiff shall be paid Rs. 1,20,000.00 from out of the common pool.”

16. While coming to this conclusion, reliance was placed on the relevant part of the Committee Report which provided for refund list, and concluded as under:

“600. After the deposit is made by the allottees, necessary directions will be issued for getting the



*services done by a contractor and appointing an Administrator for supervising the work and such other things that are necessary for the completion of the Complex. **The list of the persons who would be getting refund is given below:***

...FIRST FLOOR

*... 5. 2326/96. - **Baldev Singh and his mother Mrs. Avtar - 1,20,000.00***

...

132 persons are allotted flats, 119 persons get refund and the claims of 47 persons stand rejected.”

17. The discrepancy has arisen because while making a mention of the present suit, only the name of Shri. Baldev Singh (as reflected in the title) got mentioned and there was no reference made to the office space which was allotted to Mrs. Avtar Kaur in the Waiting List. Apparently, the investment was considered to have been made jointly by Shri. Baldev Singh and his mother Mrs. Avtar Kaur. This is evident as the amount paid by Shri. Baldev Singh was Rs. 1,00,000/- while it is Mrs. Avtar Kaur who had paid Rs. 1,20,000/-; however, while directing the refund, only the amount of Rs. 1,20,000/- was directed to be refunded, which was infact paid by Smt. Avtar Kaur for her own Unit. It is also evident from the various Orders as reproduced above that there was an inadvertent mistake in not indicating that both the plaintiffs were the allottees of different Units who were having independent claims for one Office space each; instead in the Refund List while mentioning the name of Baldev Singh and his mother Smt. Avtar Kaur, only the amount of Rs.1,20,000/- was



directed to be refunded which had in fact been paid by Smt. Avtar Kaur.

18. The present suit along with other batch of cases, was decided in the case of William Jacks & Company (India) Ltd (supra), way back vide judgement dated 01.09.1997 and decree dated 05.09.1997. It had simply relied upon the Committee Report submitted in the case of Shree Vijender Singh (Supra). The error, if any, is in the Waiting List and Refund List of the Committee Report dated 28.01.1994 submitted in the case of Shree Vijender Singh (supra). It has been indicated that Objections vide I.A. No. 1455/1995 had already been filed by the plaintiffs (Baldev Singh for himself and also as the Power of Attorney holder of his mother Avtar Kaur) against the said Report in Shree Vijender Singh (supra).

19. The applicant is the legal heir of Mrs. Avtar Kaur and is claiming to have inherited his rights by virtue of her Will in his favour. The Waiting List as prepared by the Committee in the case of Shree Vijender Singh (supra) cannot be corrected in this decided Suit by way of the present application. Since the Objections to the Committee Report have already been filed by the original plaintiff Baldev Singh for himself and his mother as attorney holder, the remedy lies in pursuing the Objections and in rectification of the records and not by way of an application under Section 151 C.P.C in the present suit.

20. Further, the relief for correction of the Waiting List is not the relief or the subject matter of the present suit which was only filed for Specific Performance. In the case of State of Orissa Vs. Madan Gopal Rungta, 1951 SCC 1024, the Hon'ble Supreme Court had observed that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in



a suit for proceeding. Similarly, the Bombay High Court in John Vergese vs Gracy Vergese, 2006 SCC OnLine Bom 764, while entertaining a review petition against an order in a civil suit, emphasised that the purpose of an interim relief is to secure the subject matter of the suit. Thus, an interim relief is granted to a party on the footing that they are prima facie entitled to the main relief and such a relief by its very nature cannot travel beyond the scope of the suit.

21. The applicant is claiming his rights through Mrs. Avtar Kaur and whatever are the remedies of Mrs. Avtar Kaur are to be perused at the appropriate forum. This case was disposed of way back in the year 1997. In case, subsequent events have occurred whereby the applicant has inherited the rights of Mrs. Avtar Kaur, he is at liberty to pursue his remedy at the appropriate forum.

22. The relief claimed cannot be given in the present suit and the application is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 04, 2023
PA/EK